

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)
)
EASTERN LIVESTOCK CO., LLC,) CASE NO. 10-93904-BHL-11
)
Debtor.)

**OBJECTION TO MOTION OF DINSMORE & SHOHL
AND RECEIVER FOR PERMISSION TO
SEEK ALLOWANCE OF PRE-PETITION ATTORNEY
AND RECEIVER FEES AND REIMBURSEMENT OF
PRE-PETITION EXPENSES IN THE RECEIVERSHIP COURT**

The First Bank and Trust Company (“First Bank”), by counsel, for its Objection to Motion of Dinsmore & Shohl and Receiver for Permission to Seek Allowance of Pre-Petition Attorney and Receiver Fees and Reimbursement of Pre-Petition Expenses in the Receivership Court (the “Motion”), alleges and states as follows:

1. First Bank is a secured creditor of Thomas and Patsy Gibsons (the “Gibsons”). Its collateral includes, *inter alia*, cattle owned by the Gibsons. The Gibsons have failed to account for the whereabouts of approximately 8,000 head of cattle that collateralized the Gibson’s indebtedness to First Bank. Upon information and belief, some of the unaccounted for cattle may have been sold to the Debtor and First Bank may assert that it has a priority security interest in proceeds of such sale in the possession of the Debtor or with respect to amounts purported to be owing to the Debtor by third parties. To the extent that First Bank does not have a security interest in proceeds of its cattle, the Debtor owes the Gibsons for cattle it sold on behalf the Gibsons and such payable owed by the Debtor to the Gibsons is subject to First Bank’s security interest.

2. The Motion seeks an order permitting Dinsmore & Shohl, LLP (“D & S”) and Elizabeth Lynch, the state court Receiver for Eastern Livestock, to seek allowance from the state court in which the receivership action was brought of pre-petition receiver fees and expenses incurred by the Receiver and D & S.

3. The Receiver and D & S originally filed an application in the state court receivership for the payment of their pre-petition fees and expenses. First Bank objected thereto on the basis that the automatic stay prevented the state court from making a determination and on the basis that “The determination of an administrative expense to be paid by a bankruptcy estate constitutes a core matter...” *In re: Statepark Bldg. Group, Ltd.* (N.D. Tex. June 29, 2005), No. 04-33916, 2005 Bankr. LEXIS 1248, at *2 (citing 28 U.S.C. §§ 157(b)(2)(B) and 1334) and that the Bankruptcy Code expressly provides for the power of the Bankruptcy Court to determine “the actual, necessary expenses . . . incurred by (E) a custodian superseded under section 543 of this title.” 11 U.S.C. § 503(b)(3)(E). The Code defines a “custodian” to include a receiver appointed in a case or proceeding not under the Code. 11 U.S.C. § 101(11). *Statepark Bldg. Group, Ltd.*, 2005 Bankr. LEXIS 1248, at *5.

4. Accordingly, the Bankruptcy Code expressly contemplates that fees or pre-petition receivers and their counsel should be reviewed and determined by the Bankruptcy Court applying applicable principles of bankruptcy law relating to the allowance of fees, as opposed to the state court which previously had jurisdiction over the receivership proceeding.

5. The Receiver has not filed an accounting of her activities as receiver. No fees allowed by this Court should be paid until such time as an accounting has been filed and approved.

6. First Bank has no objection to the payment of any fees and expenses that are allowed by the Bankruptcy Court following approval of the Receiver's accounting out of IOLTA account as requested.

WHEREFORE, The First Bank and Trust Company, by counsel, respectfully requests that the Motion be denied to the extent set forth herein and for all other appropriate relief.

Respectfully submitted,

/s/ Bret S. Clement

Bret S. Clement (#3708-49)

Ayres Carr & Sullivan, P.C.

251 East Ohio Street, Suite 500

Indianapolis, IN 46204-2184

Tel. 317-636-3471/Fax 317-636-6575

E-mail: bclement@acs-law.com

CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2011, a true and correct copy of the foregoing Objection to Motion of Dinsmore & Shohl and Receiver for Permission to Seek Allowance of Pre-Petition Attorney and Receiver Fees and Reimbursement of Pre-Petition Expenses in the Receivership Court was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

David L. Abt
davidabt@mwt.net

John W Ames
jwa@gdm.com, shm@gdm.com;tlm@gdm.com;rtrowbridge@kslaw.com

T. Kent Barber
kbarber@dlgfir.com, dlgecf@dlgfir.com;dlgecf@gmail.com

C. R. Bowles
crb@gdm.com, shm@gdm.com

Lisa Koch Bryant
courtmail@fbhlaw.net

James M. Carr
james.carr@bakerd.com, patricia.moffit@bakerd.com

John R. Carr
jrciii@acs-law.com, sfinnerty@acs-law.com

Deborah Caruso
dcaruso@daleeke.com, lharves@daleeke.com; mthomas@daleeke.com

Bret S. Clement
bclement@acs-law.com, sfinnerty@acs-law.com

Jesse Cook-Dubin
jcookdubin@vorys.com, vdarmstrong@vorys.com

Kirk Crutcher
kcrutcher@mcs-law.com, jparsons@mcs-law.com; cmarshall@mcs-law.com

Dustin R. DeNeal
dustin.deneal@bakerd.com, patricia.moffit@bakerd.com

Laura Day DelCotto
ldelcotto@dlgfirm.com, dlgecf@dlgfirm.com; dlgecfs@gmail.com

David Alan Domina
dad@dominalaw.com, KKW@dominalaw.com; efiling@dominalaw.com

Daniel J. Donnellon
ddonnellon@ficlaw.com, knorwick@ficlaw.com

Robert Hughes Foree
robertforee@bellsouth.net

Sandra D. Freeburger
sfreeburger@dsf-atty.com, smattingly@dsf-atty.com

Terry E. Hall
terry.hall@bakerd.com, sharon.korn@bakerd.com; sarah.herendeen@bakerd.com

John Huffaker
john.huffaker@sprouselaw.com, lynn.acton@sprouselaw.com; rhonda.rogers@sprouselaw.com

James Bryan Johnston
bjtexas59@hotmail.com, bryan@ebs-law.net

Todd J. Johnston
tjohnston@mcjllp.com

Edward M King
tking@fbtlaw.com, dgioffre@fbtlaw.com

James A. Knauer
jak@kgrlaw.com, hns@kgrlaw.com

Theodore A Konstantinopoulos
ndohbky@jbandr.com

Randall D. LaTour
rdlatour@vorys.com, khedwards@vorys.com

David L. LeBas
dlebas@namanhowell.com, koswald@namanhowell.com

Elliott D. Levin
robin@rubin-levin.net, edl@trustesolutions.com

Elliott D. Levin
edl@rubin-levin.net, atty_edl@trustesolutions.com

Kim Martin Lewis
kim.lewis@dinslaw.com, lisa.geeding@dinslaw.com;patrick.burns@dinslaw.com

Karen L. Lobring
lobring@msn.com

John Hunt Lovell
john@lovell-law.net, sabrina@lovell-law.net

John Frederick Massouh
john.massouh@sprouselaw.com

Kelly Greene McConnell
lisahughes@givenspursley.com

William Robert Meyer
rmeyer@stites.com

Allen Morris
amorris@stites.com, dgoodman@stites.com

Judy Hamilton Morse
judy.morse@crowedunlevy.com, ecf@crowedunlevy.com;
donna.hinkle@crowedunlevy.com; karol.brown@crowedunlevy.com

Walter Scott Newbern
wsnewbern@msn.com

Matthew J. Ochs
matt.ochs@moyewwhite.com, kim.maynes@moyewwhite.com

Cathy S. Pike
cpike@weberandrose.com, jtench@weberandrose.com

Ross A. Plourde
ross.plourde@mcafeetaft.com, erin.clogston@mcafeetaft.com

Wendy W Ponader
wendy.ponader@bakerd.com, sarah.herendeen@bakerd.com

Timothy T. Pridmore
tpridmore@mcjllp.com, lskibell@mcjllp.com

Jeffrey E. Ramsey
jramsey@hopperblackwell.com, mhaught@hopperblackwell.com

Mark A. Robinson
mrobinson@vhrlaw.com, dalbers@vhrlaw.com

Jeremy S Rogers
Jeremy.Rogers@dinslaw.com, joyce.jenkins@dinslaw.com

John M. Rogers
johnr@rubin-levin.net, susan@rubin-levin.net

Ivana B. Shallcross
ibs@gdm.com

Robert K Stanley
robert.stanley@bakerd.com

Meredith R. Thomas
mthomas@daleeke.com, kmark@daleeke.com

John M. Thompson
john.thompson@crowedunlevy.com, jody.moore@crowedunlevy.com,
donna.hinkle@crowedunlevy.com

U.S. Trustee
ustpreion10.in.ecf@usdoj.gov

Stephen A. Weigand
sweigand@ficlaw.com

Charles R. Wharton
Charles.R.Warton@usdoj.gov, Charles.R.Warton@usdoj.gov

Jessica E. Yates
jyates@swlaw.com, edufficy@swlaw.com

James T. Young
james@rubin-levin.net, ATTY_JTY@trustesolutions.com;
kim@rubin-levin.net;lemerson@rubin-levin.net

I further certify that on March 8, 2011, a copy of the foregoing Objection to Motion of Dinsmore & Shohl and Receiver for Permission to Seek Allowance of Pre-Petition Attorney and Receiver Fees and Reimbursement of Pre-Petition Expenses in the Receivership Court was mailed by first-class U.S. Mail, postage prepaid, and properly addressed to the following:

Bovine Medical Associates, LLC
1500 Soper Road
Carlisle, KY 40311

National Cattlemen's Beef Association
c/o Alice Devine
6031 SW 37th St.
Topeka, KA 66610

/s/ Bret S. Clement

Bret S. Clement